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FILED

JAN 24 2018

SUSAN Y. SOONG
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE

10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA
12 SAN JOSE DIVISION

13 UNITED STATES OF AMERICA,) NO. 17-CR-00130 LHK
14 Plaintiff,)
15 v.) **JOINT STIPULATIONS AND WAIVERS FOR**
16 JOSE BERNAL RAMIREZ,) **BENCH TRIAL**
17 Defendant.) Hearing Date: January 24, 2018
18) Hearing Time: 9:15 a.m.
19) Honorable Lucy H. Koh

20 The parties hereby submit the following waiver and stipulations in anticipation of a bench trial
21 scheduled for January 24, 2018, before this Court.

22 **I. INTRODUCTION**

23 This trial concerns the allegation that defendant Jose Bernal Ramirez (“defendant”) is an alien
24 who illegally reentered the United States after his removal to Mexico.

25 A grand jury returned an indictment on March 16, 2017, charging defendant with a single count
26 of illegal reentry following deportation, in violation of 8 U.S.C. § 1326. On November 1, 2017,
27 defendant moved to dismiss the indictment on grounds that the prior removal order in this case is invalid
28 because it resulted from defective removal proceedings, and the removal therefore cannot serve as a
predicate for this illegal reentry prosecution. The United States filed its Opposition on November 29,

1 2017, and defendant filed its Reply on December 13, 2017. On January 16, 2018, the Court denied
2 defendant's motion by written opinion. On January 23, 2018, defendant filed objections to the order
3 denying defendant's motion to dismiss the indictment and a motion for leave to file a motion for
4 reconsideration of that order. On January 23, 2018, the Court denied defendant's motion for leave to file
5 a motion for reconsideration and overruled defendant's objections.

6 **II. WAIVER OF RIGHTS**

7 1. Pursuant to Federal Rule of Criminal Procedure 23, defendant waives his right to a jury
8 trial, and the United States consents to have the Court conduct the trial in this case.

9 2. Defendant waives his right to testify and to call any witnesses on his own behalf, and he
10 submits the matter for decision by the Court based on the factual stipulations below. Defendant has
11 been informed of his right to have a trial by jury. Defendant has consulted with his lawyer regarding
12 this decision. It is defendant's knowing intention to proceed to trial through this written statement of
13 stipulated facts rather than calling and cross-examining witnesses.

14 3. The United States agrees not to call witnesses, and to submit the matter for decision
15 based on the factual stipulations below.

16 4. The parties enter these stipulations with the understanding that defendant objects to the
17 district court's January 16, 2018, order denying his motion to dismiss (ECF No. 27), and the defendant
18 objects to the district court's January 23, 2018, order denying defendant's motion for leave to file a
19 motion for reconsideration and overruling defendant's objections. (ECF #29). The government and
20 defendant agree that by entering these stipulations, defendant is not rendering moot his right to appeal
21 the denial of his motion to dismiss. *See United States v. Larson*, 302 F.3d 1016, 1020 (9th Cir. 2002).

22 **III. FACTUAL STIPULATIONS**

23 But for these stipulations, at trial the United States would have introduced documents and called
24 witnesses to establish at least the following facts:

25 1. Defendant Jose Bernal Ramirez ("defendant") is a citizen of Mexico, and is not now and
26 has never been a citizen or national of the United States.

27 2. Defendant was deported or removed from the United States to Mexico on or about April
28 16, 2013.

1 3. On or after April 16, 2013, but no later than July 12, 2016, defendant voluntarily
2 reentered and knowingly remained in the United States. On or about July 12, 2016, in Monterey County
3 in the Northern District of California, defendant was found in the United States.

4 4. Defendant has never received the required permission to reenter the United States from
5 either the Attorney General or the Secretary of Homeland Security.

6 5. On or about April 14, 2011, defendant was convicted in the Superior Court of California,
7 County of Monterey, of Robbery: Second Degree, a felony, in violation of California Penal Code § 211
8 and Assault with force likely to cause great bodily injury, a felony, in violation of California Penal Code
9 § 245(a)(1). Defendant was sentenced to two (2) years' imprisonment for this offense.

IT IS SO STIPULATED.

ALEX G. TSE
Acting United States Attorney

DATED: January 24, 2018



DATED: January 24, 2018

BRIAN E. CABRERA
Special Assistant United States Attorney

DATED: January 24, 2018

VARELL FULLER
Assistant Federal Public Defender